

AMENDED IN ASSEMBLY APRIL 22, 2009

AMENDED IN ASSEMBLY MARCH 31, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1070

Introduced by Assembly Member Hill

February 27, 2009

An act to amend Sections 801.01, 2008, 2225.5, 2227, and 2425.3 of, *and to add Section 804.5 to*, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1070, as amended, Hill. Healing arts.

(1) Existing law provides for the licensure and regulation of osteopathic physicians and surgeons by the Osteopathic Medical Board of California, ~~of physicians and surgeons by the Medical Board of California, and of podiatrists by the California Board of Podiatric Medicine.~~ Existing law requires those licensees, insurers providing professional liability insurance to those licensees, and governmental agencies that self-insure those licensees to report specified settlements, arbitration awards, or civil judgments to the licensee's board if based on the licensee's alleged negligence, error, or omission in practice or his or her rendering of unauthorized professional services.

This bill would specify that ~~those reports must be sent whether or not the licensee was a named party in the underlying claim or action and would limit reports regarding claims or actions to those based on the licensee's alleged negligence, error, or omission in practice in California.~~ The bill would also specify that the reporting requirements apply to the University of California, as specified.

Existing law requires licensees ~~obligated~~ *and insurers required* to make these reports to send a copy of the report to the claimant or his or her counsel and requires a claimant or his or her counsel who does not receive a copy of the report within a specified time period to make the report to the appropriate board. Existing law makes a failure of a licensee, claimant, or counsel to comply with these requirements a public offense punishable by a specified fine.

This bill would require any entity or person ~~obligated~~ *required* to make a report to send a copy of the report to the claimant or his or her counsel. *The bill would also require an entity that makes a report to notify the licensee within 15 days of the filing of the report.*

The bill would also make a failure to comply with any of the reporting requirements an infraction punishable by a specified fine. By expanding the scope of a crime, the bill would impose a state-mandated local program.

~~Existing law requires these reports to include certain information, including the name and address of every physician and surgeon or podiatrist who was alleged to have acted improperly.~~

~~This bill would require the reports to include that information with respect to every physician and surgeon or podiatrist who participated in the care or professional services provided to the patient.~~

Existing law ~~also~~ *requires these* reports to include *certain information, including a brief description of the facts of each claim, charge, or allegation, and the amount of the judgment or award and the date of its entry or service.*

This bill would eliminate the requirement that this description be brief and would require the description to also include the role of each physician and surgeon or podiatrist in the care or professional services provided to the patient, as specified, ~~and a list of the dates of treatment rendered by those persons.~~ *The bill would also require the report to include a copy of the judgment or award.*

(2) The Medical Practice Act provides for the regulation of physicians and surgeons by the Medical Board of California, and provides that the protection of the public is the highest priority for the board in exercising its licensing, regulatory, and disciplinary functions.

This bill would prohibit any entity that provides early intervention, patient safety, or risk management programs to patients, or contracts for those programs for patients, from requiring that a patient waive his or her rights to contact or cooperate with the board, or to file a complaint with the board.

(2)

(3) Existing law authorizes the Medical Board of California to appoint panels from its members for the purposes of fulfilling specified obligations and prohibits the president of the board from serving as a member of a panel.

This bill would allow the president of the board to serve as a member of a panel if there is a vacancy in the membership of the board.

(3)

(4) Under existing law, a physician and surgeon or podiatrist who fails to comply with a patient's medical record request, as specified, within 15 days, or who fails or refuses to comply with a court order mandating release of records, is required to pay a civil penalty of \$1,000 per day, as specified.

This bill would place a limit of \$10,000 on those civil penalties and would make other related changes, *including providing a definition of "certified medical records," as specified.*

(4)

(5) Existing law prescribes the disciplinary action that may be taken against a physician and surgeon or podiatrist. Among other things, existing law authorizes the licensee to be publicly reprimanded.

This bill would authorize the public reprimand to include a requirement that the licensee complete educational courses approved by the board.

(5)

(6) Existing law requires the board to request a licensed physician and surgeon to report, at the time of license renewal, any specialty board certification he or she holds, as specified. Existing law also authorizes a licensed physician and surgeon to report to the board, at the time of license renewal, information regarding his or her cultural background and foreign language proficiency.

This bill would instead require licensees to provide that information at the time of license renewal and immediately upon issuance of an initial license.

Existing law requires a licensed physician and surgeon to also report, at the time of license renewal, his or her practice status, as specified.

This bill would also require that this information be provided immediately upon issuance of an initial license.

~~The bill would also require a licensed physician and surgeon to report to the board, at the time of license renewal, if any civil action has been~~

~~filed or criminal conviction has occurred, as specified, since his or her last renewal or initial licensure, as specified.~~

(6)

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 801.01 of the Business and Professions
2 Code is amended to read:

3 801.01. The Legislature finds and declares that the filing of
4 reports with the applicable state agencies required under this
5 section is essential for the protection of the public. It is the intent
6 of the Legislature that the reporting requirements set forth in this
7 section be interpreted broadly in order to expand reporting
8 obligations.

9 (a) A complete report shall be sent to the Medical Board of
10 California, the Osteopathic Medical Board *of California*, or the
11 California Board of Podiatric Medicine, with respect to a licensee
12 of the board as to the following:

13 (1) A settlement over thirty thousand dollars (\$30,000) or
14 arbitration award of any amount or a civil judgment of any amount,
15 whether or not vacated by a settlement after entry of the judgment,
16 that was not reversed on appeal, of a claim or action for damages
17 for death or personal injury caused by the licensee's alleged
18 negligence, error, or omission in practice ~~in California~~, or by his
19 or her rendering of unauthorized professional services, ~~whether or~~
20 ~~not the licensee was a named party in the claim or action.~~

21 (2) A settlement over thirty thousand dollars (\$30,000) ~~of a~~
22 ~~claim or action, whether or not the licensee was a named party in~~
23 ~~the claim or action~~, if the settlement is based on the licensee's
24 alleged negligence, error, or omission in practice ~~in California~~, or
25 on the licensee's rendering of unauthorized professional services,
26 and a party to the settlement is a corporation, medical group,

1 partnership, or other corporate entity in which the licensee has an
2 ownership interest or that employs or contracts with the licensee.

3 (b) The report shall be sent by the following:

4 (1) The insurer providing professional liability insurance to the
5 licensee.

6 (2) The licensee, or his or her counsel, if the licensee does not
7 possess professional liability insurance.

8 (3) A state or local governmental agency that self-insures the
9 licensee. For purposes of this section “state governmental agency”
10 includes, but is not limited to, the University of California.

11 (c) The entity, person, or licensee obligated to report pursuant
12 to subdivision (b) shall send the complete report if the judgment,
13 settlement agreement, or arbitration award is entered against or
14 paid by the employer of the licensee and not entered against or
15 paid by the licensee. “Employer,” as used in this paragraph, means
16 a professional corporation, a group practice, a health care facility
17 or clinic licensed or exempt from licensure under the Health and
18 Safety Code, a licensed health care service plan, a medical care
19 foundation, an educational institution, a professional institution,
20 a professional school or college, a general law corporation, a public
21 entity, or a nonprofit organization that employs, retains, or contracts
22 with a licensee referred to in this section. Nothing in this paragraph
23 shall be construed to authorize the employment of, or contracting
24 with, any licensee in violation of Section 2400.

25 (d) The report shall be sent to the Medical Board of California,
26 the Osteopathic Medical Board of California, or the California
27 Board of Podiatric Medicine, as appropriate, within 30 days after
28 the written settlement agreement has been reduced to writing and
29 signed by all parties thereto, within 30 days after service of the
30 arbitration award on the parties, or within 30 days after the date
31 of entry of the civil judgment.

32 ~~(e) If an insurer is required under subdivision (b) to send the~~
33 ~~report, the insurer shall notify the claimant, or if the claimant is~~
34 ~~represented by counsel, the claimant’s counsel, that the insurer~~
35 ~~has sent the report to the Medical Board of California, the~~
36 ~~Osteopathic Medical Board of California, or the California Board~~
37 ~~of Podiatric Medicine. If the claimant, or his or her counsel, has~~
38 ~~not received this notice within 45 days after the settlement was~~
39 ~~reduced to writing and signed by all of the parties or the arbitration~~
40 ~~award was served on the parties or the date of entry of the civil~~

1 ~~judgment, the claimant or the claimant's counsel shall make the~~
2 ~~report to the appropriate board.~~

3 ~~(f)~~

4 (e) The entity, person, or licensee ~~obligated~~ *required* to report
5 under subdivision (b) shall send a copy of the report to the claimant
6 or to his or her counsel if he or she is represented by counsel. If
7 the claimant or his or her counsel has not received a copy of the
8 report within 45 days after the settlement was reduced to writing
9 and signed by all of the parties or the arbitration award was served
10 on the parties or the date of entry of the civil judgment, the claimant
11 or the claimant's counsel shall make the report to the appropriate
12 board.

13 ~~(g)~~

14 (f) Failure to comply with this section is a public offense
15 punishable by a fine of not less than five hundred dollars (\$500)
16 and not more than five thousand dollars (\$5,000).

17 ~~(h)~~

18 (g) (1) The Medical Board of California, the Osteopathic
19 Medical Board of California, and the California Board of Podiatric
20 Medicine may develop a prescribed form for the report.

21 (2) The report shall be deemed complete only if it includes the
22 following information:

23 (A) The name and last known business and residential addresses
24 of every plaintiff or claimant involved in the matter, whether or
25 not the person received an award under the settlement, arbitration,
26 or judgment.

27 (B) The name and last known business and residential address
28 of every licensee who ~~participated in the care or professional~~
29 ~~services provided to the patient~~ *was alleged to have acted*
30 *improperly*, whether or not that person was a named defendant in
31 the action and whether or not that person was required to pay any
32 damages pursuant to the settlement, arbitration award, or judgment.

33 (C) The name, address, and principal place of business of every
34 insurer providing professional liability insurance to any person
35 described in subparagraph (B), and the insured's policy number.

36 (D) The name of the court in which the action or any part of the
37 action was filed, and the date of filing and case number of each
38 action.

39 (E) A description or summary of the facts of each claim, charge,
40 or allegation, including the date of occurrence, ~~each and the~~

1 licensee's role in the care or professional services provided to the
2 patient with respect to those services at issue in the claim, ~~charge,~~
3 ~~or allegation, and a list of the dates of treatment rendered by each~~
4 ~~licensee or action.~~

5 (F) The name and last known business address of each attorney
6 who represented a party in the settlement, arbitration, or civil
7 action, including the name of the client he or she represented.

8 (G) The amount of the judgment ~~and~~, the date of its entry, *and*
9 *a copy of the judgment*; the amount of the arbitration award, the
10 date of its service on the parties, and a copy of the award document;
11 or the amount of the settlement and the date it was reduced to
12 writing and signed by all parties. If an otherwise reportable
13 settlement is entered into after a reportable judgment or arbitration
14 award is issued, the report shall include both the settlement and *a*
15 *copy of the judgment or award.*

16 (H) The specialty or subspecialty of the licensee who
17 ~~participated in the care or professional services provided to the~~
18 ~~patient.~~ *was the subject of the claim or action.*

19 (I) Any other information the Medical Board of California, the
20 Osteopathic Medical Board of California, or the California Board
21 of Podiatric Medicine may, by regulation, require.

22 (3) Every professional liability insurer, self-insured
23 governmental agency, or licensee or his or her counsel that makes
24 a report under this section and has received a copy of any written
25 or electronic patient medical or hospital records prepared by the
26 treating physician and surgeon or podiatrist, or the staff of the
27 treating physician and surgeon, podiatrist, or hospital, describing
28 the medical condition, history, care, or treatment of the person
29 whose death or injury is the subject of the report, or a copy of any
30 deposition in the matter that discusses the care, treatment, or
31 medical condition of the person, shall include with the report,
32 copies of the records and depositions, subject to reasonable costs
33 to be paid by the Medical Board of California, the Osteopathic
34 Medical Board of California, or the California Board of Podiatric
35 Medicine. If confidentiality is required by court order and, as a
36 result, the reporter is unable to provide the records and depositions,
37 documentation to that effect shall accompany the original report.
38 The applicable board may, upon prior notification of the parties
39 to the action, petition the appropriate court for modification of any
40 protective order to permit disclosure to the board. A professional

1 liability insurer, self-insured governmental agency, or licensee or
2 his or her counsel shall maintain the records and depositions
3 referred to in this paragraph for at least one year from the date of
4 filing of the report required by this section.

5 (i)

6 (h) If the board, within 60 days of its receipt of a report filed
7 under this section, notifies a person named in the report, that person
8 shall maintain for the period of three years from the date of filing
9 of the report any records he or she has as to the matter in question
10 and shall make those records available upon request to the board
11 to which the report was sent.

12 (j)

13 (i) Notwithstanding any other provision of law, no insurer shall
14 enter into a settlement without the written consent of the insured,
15 except that this prohibition shall not void any settlement entered
16 into without that written consent. The requirement of written
17 consent shall only be waived by both the insured and the insurer.

18 (j) Any entity that makes a report pursuant to this section shall,
19 within 15 days after filing the report, notify the licensee that the
20 report was filed with the appropriate licensing board.

21 (k) For purposes of this section, “licensee” means a licensee of
22 the Medical Board of California, the Osteopathic Medical Board
23 of California, or the California Board of Podiatric Medicine.

24 SEC. 2. Section 804.5 is added to the Business and Professions
25 Code, to read:

26 804.5. The Legislature recognizes that various types of entities
27 are creating, implementing, and maintaining patient safety and
28 risk management programs that encourage early intervention in
29 order to address known complications and other unanticipated
30 events requiring medical care. The Legislature recognizes that
31 some entities even provide financial assistance to individual
32 patients to help them address these unforeseen health care
33 concerns. It is the intent of the Legislature, however, that such
34 financial assistance not limit a patient’s interaction with, or his
35 or her rights before, the Medical Board of California.

36 Any entity that provides early intervention, patient safety, or risk
37 management programs to patients, or contracts for those programs
38 for patients, shall not include, as part of any of those programs
39 or contracts, any of the following:

1 (a) A provision that prohibits a patient or patients from
2 contacting or cooperating with the board.

3 (b) A provision that prohibits a patient or patients from filing
4 a complaint with the board.

5 (c) A provision that requires a patient or patients to withdraw
6 a complaint that has been filed with the board.

7 ~~SEC. 2.~~

8 SEC. 3. Section 2008 of the Business and Professions Code is
9 amended to read:

10 2008. The board may appoint panels from its members for the
11 purpose of fulfilling the obligations established in subdivision (c)
12 of Section 2004. Any panel appointed under this section shall at
13 no time be comprised of less than four members and the number
14 of public members assigned to the panel shall not exceed the
15 number of licensed physician and surgeon members assigned to
16 the panel. The president of the board shall not be a member of any
17 panel unless there is a vacancy in the membership of the board.
18 Each panel shall annually elect a chair and a vice chair.

19 ~~SEC. 3.~~

20 SEC. 4. Section 2225.5 of the Business and Professions Code
21 is amended to read:

22 2225.5. (a) (1) A licensee who fails or refuses to comply with
23 a request for the certified medical records of a patient, that is
24 accompanied by that patient's written authorization for release of
25 records to the board, within 15 days of receiving the request and
26 authorization, shall pay to the board a civil penalty of one thousand
27 dollars (\$1,000) per day for each day that the documents have not
28 been produced after the 15th day, up to ten thousand dollars
29 (\$10,000), unless the licensee is unable to provide the documents
30 within this time period for good cause.

31 (2) A health care facility shall comply with a request for the
32 certified medical records of a patient that is accompanied by that
33 patient's written authorization for release of records to the board
34 together with a notice citing this section and describing the
35 penalties for failure to comply with this section. Failure to provide
36 the authorizing patient's certified medical records to the board
37 within 30 days of receiving the request, authorization, and notice
38 shall subject the health care facility to a civil penalty, payable to
39 the board, of up to one thousand dollars (\$1,000) per day for each
40 day that the documents have not been produced after the 30th day,

1 up to ten thousand dollars (\$10,000), unless the health care facility
2 is unable to provide the documents within this time period for good
3 cause. This paragraph shall not require health care facilities to
4 assist the board in obtaining the patient's authorization. The board
5 shall pay the reasonable costs of copying the certified medical
6 records.

7 (b) (1) A licensee who fails or refuses to comply with a court
8 order, issued in the enforcement of a subpoena, mandating the
9 release of records to the board shall pay to the board a civil penalty
10 of one thousand dollars (\$1,000) per day for each day that the
11 documents have not been produced after the date by which the
12 court order requires the documents to be produced, up to ten
13 thousand dollars (\$10,000), unless it is determined that the order
14 is unlawful or invalid. Any statute of limitations applicable to the
15 filing of an accusation by the board shall be tolled during the period
16 the licensee is out of compliance with the court order and during
17 any related appeals.

18 (2) Any licensee who fails or refuses to comply with a court
19 order, issued in the enforcement of a subpoena, mandating the
20 release of records to the board is guilty of a misdemeanor
21 punishable by a fine payable to the board not to exceed five
22 thousand dollars (\$5,000). The fine shall be added to the licensee's
23 renewal fee if it is not paid by the next succeeding renewal date.
24 Any statute of limitations applicable to the filing of an accusation
25 by the board shall be tolled during the period the licensee is out
26 of compliance with the court order and during any related appeals.

27 (3) A health care facility that fails or refuses to comply with a
28 court order, issued in the enforcement of a subpoena, mandating
29 the release of patient records to the board, that is accompanied by
30 a notice citing this section and describing the penalties for failure
31 to comply with this section, shall pay to the board a civil penalty
32 of up to one thousand dollars (\$1,000) per day for each day that
33 the documents have not been produced, up to ten thousand dollars
34 (\$10,000), after the date by which the court order requires the
35 documents to be produced, unless it is determined that the order
36 is unlawful or invalid. Any statute of limitations applicable to the
37 filing of an accusation by the board against a licensee shall be
38 tolled during the period the health care facility is out of compliance
39 with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars (\$5,000). Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000) and shall be reported to the State Department of ~~Health Services~~ *Public Health* and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code).

(f) *For purposes of this section, “certified medical records” means a copy of the patient’s medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the board.*

~~(f)~~

(g) For purposes of this section, a “health care facility” means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

~~SEC. 4.~~

SEC. 5. Section 2227 of the Business and Professions Code is amended to read:

2227. (a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as

1 designated in Section 11371 of the Government Code, or whose
2 default has been entered, and who is found guilty, or who has
3 entered into a stipulation for disciplinary action with the board,
4 may, in accordance with the provisions of this chapter:

5 (1) Have his or her license revoked upon order of the board.

6 (2) Have his or her right to practice suspended for a period not
7 to exceed one year upon order of the board.

8 (3) Be placed on probation and be required to pay the costs of
9 probation monitoring upon order of the board.

10 (4) Be publicly reprimanded by the board. The public reprimand
11 may include a requirement that the licensee complete relevant
12 educational courses approved by the board.

13 (5) Have any other action taken in relation to discipline as part
14 of an order of probation, as the board or an administrative law
15 judge may deem proper.

16 (b) Any matter heard pursuant to subdivision (a), except for
17 warning letters, medical review or advisory conferences,
18 professional competency examinations, continuing education
19 activities, and cost reimbursement associated therewith that are
20 agreed to with the board and successfully completed by the
21 licensee, or other matters made confidential or privileged by
22 existing law, is deemed public, and shall be made available to the
23 public by the board pursuant to Section 803.1.

24 ~~SEC. 5.~~

25 *SEC. 6.* Section 2425.3 of the Business and Professions Code
26 is amended to read:

27 2425.3. (a) A licensed physician and surgeon shall report to
28 the board, immediately upon issuance of an initial license and at
29 the time of license renewal, any specialty board certification he or
30 she holds that is issued by a member board of the American Board
31 of Medical Specialties or approved by the Medical Board of
32 California.

33 (b) A licensed physician and surgeon shall also report to the
34 board, immediately upon issuance of an initial license and at the
35 time of license renewal, his or her practice status, designated as
36 one of the following:

37 (1) Full-time practice in California.

38 (2) Full-time practice outside of California.

39 (3) Part-time practice in California.

1 (4) Medical administrative employment that does not include
2 direct patient care.

3 (5) Retired.

4 (6) Other practice status, as may be further defined by the
5 ~~Division of Licensing~~ board.

6 (c) (1) A licensed physician and surgeon shall report to the
7 board, immediately upon issuance of an initial license and at the
8 time of license renewal, and the board shall collect, information
9 regarding his or her cultural background and foreign language
10 proficiency.

11 (2) Information collected pursuant to this subdivision shall be
12 aggregated on an annual basis based on categories utilized by the
13 board in the collection of the data, and shall be aggregated into
14 both statewide totals and ZIP-Code *code* of primary practice
15 location totals.

16 (3) Aggregated information under this subdivision shall be
17 compiled annually and reported on the board's Internet Web site
18 on or before October 1 of each year.

19 ~~(d) A licensed physician and surgeon shall report to the board,~~
20 ~~at the time of license renewal, if either of the following have~~
21 ~~occurred since his or her last renewal, or if this is the licensee's~~
22 ~~first renewal, since his or her initial license was issued:~~

23 ~~(1) He or she has been convicted of a felony or misdemeanor.~~

24 ~~(2) The filing of a civil action alleging unlawful conduct by the~~
25 ~~licensee, whether or not the licensee was a named party in the~~
26 ~~action.~~

27 ~~(e)~~

28 ~~(d)~~ The information collected pursuant to subdivisions (a) and
29 (b) may also be placed on the board's Internet Web site.

30 ~~SEC. 6.~~

31 *SEC. 7.* No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

O